

INVESTIGATIVE REPORT
HRC Case No.: HV12-0001
HUD Case No.: 01-11-0398-8

CHARGING PARTY: Theadore Stone

RESPONDING PARTY: Susan Patnoe & Border Motel, Inc.,
Christine Barch, President

CHARGE: Housing – disability/reasonable accommodation request

Summary of Charge: On July 25, 2011, Mr. Stone filed a housing discrimination charge alleging that he had been discriminated against by Susan Patnoe, manager of the Border Motel and Christine Barch, owner/president of Border Motel. Specifically, he stated that the respondents denied his reasonable accommodation request for an accessible parking space near his dwelling

Summary of Response: The respondents denied that they discriminated against Mr. Stone. The manager stated that Mr. stone had a park place assigned to him.

Preliminary Recommendations: This investigation makes a preliminary recommendation that the Human Rights Commission find there are **reasonable grounds** to believe that the respondents violated 9 V.S.A. §4503(10) (which is a refusal to provide a reasonable accommodation) of the Vermont Fair Housing and Public Accommodations Act.

INTERVIEWS

09/08/2011 – Theadore Stone
09/09/2011 - Susan Patnoe

SITE VISITS

09/08/2011 – Border Motel – Derby, VT

DOCUMENTS

07/25/2011 – Charge of Discrimination

08/04/2011 – Ms. Patnoe's response to Charge

**08/22/2011 – Mr. Stone's response to Ms. Patnoe's response
Including copies of notes left for Mr. Stone, and
photos of the parking area**

9 V.S.A §4503(10)

(a) It shall be unlawful for any person:

(10) To refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas.

ELEMENTS OF PROOF

9 V.S.A. §4503 (10) – Prima Facie Elements

1. Mr. Stone has a qualifying disability;
2. Mr. Stone made a request for a reasonable accommodation;
3. Mr. Stone's request was reasonable and did not unduly burden the respondents; and,
4. The respondents failed to provide the accommodation.

FACTS

Undisputed Facts

Border Motel is an incorporated business. The president of Border Motel, Inc. is Christine Barch. She resides in Massachusetts. The registered agent listed on the Vermont Secretary of State web site

is no longer the registered agent for this corporation.¹ Susan Patnoe is the manager of the Border Motel.² She was not the manager when Mr. Stone first moved into the motel and made his initial reasonable accommodation request.

Mr. Stone is a person with a disability. He receives Social Security Disability Insurance (SSDI). He has a State of Vermont accessible parking placard and at times has to use oxygen when he leaves his dwelling. This investigation noticed a slight limp when he walks. He has resided at the Border Motel for about three years. A number of years ago, Mr. Stone requested that he be assigned an accessible parking space near his dwelling. Originally, he was assigned a parking space that met his needs. (See appendix A - he was assigned a space to the right of space B – it might have included a portion of the space now designated “B”). The accessible parking spaces were moved by management when the local fire inspector informed the owner that the existing “accessible”³ parking space, where Mr. Stone parked, was blocking a fire escape route. At that time the designated accessible parking spaces were moved further away from Mr. Stone’s room. Mr. Stone was assigned one of the newly designated accessible parking spaces, 1-3, even though there were three parking spaces closer to his apartment. (See drawing Appendix A

¹ This investigation attempted to contact Christine Barch by sending the charge to the motel’s address in Derby, Vermont; by talking to the manager, Susan Patnoe; by send a certified letter to the motel’s address in Derby; by sending a letter to the registered agent listed on the VT. Secretary of State’s web site; by leaving a message for the manager to return a call; and, by sending a certified and regular mail letter to Christine Barch’s address in Massachusetts which she signed for on Oct 11, 2011.

² Ms. Patnoe refused to engage in the investigative process after sending in her initial written response. She hung up on this investigation during a phone conversation and failed to return a subsequent message left for her.

³ It is unclear whether the space originally assigned to Mr. Stone met the ADA requirements for an accessible parking space. However, the assignment/location of this space met his reasonable accommodation needs.

– space A, B and area C were all closer to his unit than the space he was assigned.)

On June 23, 2011, Ms. Patnoe left Mr. Stone a note stating that he needed to park his car “in the lone spot I showed you because it leaks oil.” (See Appendix A - this would be space 2.) She also stated that she will have his car towed if he parks in any other space. There is another undated note also warning him that his car will be towed if he does not park in his designated spot or behind the motel. On July 14, 2011, Ms. Stone’s car was towed. On July, 19, 201, Mr. Stone received another note again instructing him to park in his assigned “handi-cap space” (sic) or in the back of the motel because his car leaks oil. On July 25, 2011, Mr. Stone filed a discrimination complaint with the Vermont Human Rights Commission (HRC).

Statement of Mr. Stone

Mr. Stone shared with this investigation a number of complaints he has with Ms. Patnoe which have nothing to do with his allegation of discrimination but indicate that there are tensions and difficulties between Mr. Stone and Ms. Patnoe. When this investigation made a site visit to the Border Motel, Mr. Stone explained the facts that are outlined in the “Undisputed Facts” section, above, of this Investigative Report.

Mr. Stone also stated that when he first moved into the motel there were no parking spaces designated as “accessible” parking spaces. He stated the space he was originally assigned (in the A & B area on the attached drawing) worked out well for him. However, when the fire marshal inspected the motel property he made the manager eliminate one of the three parking spaces so the hall area would not be blocked by a car. The result was that Mr. Stone’s

assigned parking space no longer existed because there were only two spaces remaining, space A and B. Mr. Stone's assigned parking space was moved further away from his room to the new "accessible parking" area, area 1, 2, and 3 on the drawing.⁴

ADDITIONAL STATEMENTS –

- Mr. Stone admitted to this investigation that his car leaked oil.
- Mr. Stone denied that he sold prescription drugs from his room at the Border Motel.
- Mr. Stone stated that the parking space designated to him was moved three times - each time further away from his room.

Statements of Susan Patnoe⁵

In Ms. Patnoe's brief written response to the discrimination charge she stated that she asked Mr. Stone to vacate his room because he was selling prescription drugs from his room and he had three cats that created a very strong odor.⁶ She also stated that Mr. Stone was told he could only park in his assigned "accessible" parking spot because his car leaked oil onto the parking surface and she did not want oil spots all over the parking lot.

Ms. Patnoe alleges that Mr. Stone only made this discrimination complaint because he was asked to leave the property.

⁴ It should be noted that the three spaces that are now designated as "accessible" parking spaces do not meet the required fair housing or Americans with Disabilities Act standards. They are too narrow; none of the spaces are van accessible, only two of the spaces have the appropriate accessibility signs and only two of the spaces have the accessible symbol painted on the parking surface.

⁵ Ms. Patnoe sent this investigation a one-page written response to the discrimination charge. However, she would not engage in an interview when this investigation contacted her. She hung up on this investigator and a couple of weeks later would not return this investigation's phone call.

⁶ This investigation met with Mr. Stone outside in the parking lot, but this investigation did not notice a strong cat odor when Mr. Stone answered his door.

ANALYSIS

Vermont's Fair Housing and Public Accommodations Act (FHPAA), 9 V.S.A. §4503 states:

It shall be unlawful for any person:

(10) To refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas.

Elements of Fair Housing Legal Analysis

To prevail in this portion of his charge Mr. Stone must prove his allegations by a preponderance of the evidence. (See In re Smith, 169 Vt. 162, 168 (1999) ("Our case law provides that a preponderance of the evidence is the usual standard of proof in state administrative adjudications.") Additionally, Vermont's Supreme Court has stated that it looks to the federal Fair Housing Act in construing Vermont's Fair Housing and Public Accommodations Act (VFHPA.) Human Rights Commission v. LaBrie, Inc., 164 Vt. 237, 243 (1995). The Supreme Court of the United States has held that the Federal Fair Housing Act's (FHA's) language should be construed broadly. Trafficante v. Metro life Ins. Co., 409 U.S. 205, 209 (1972), City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 731 (1995).

9 V.S.A. §4503(10)

1. Mr. Stone has a qualifying disability;
2. Mr. Stone made a request for a reasonable accommodation;
3. Mr. Stone's request was reasonable and did not unduly burden the respondents; and,
4. The respondents failed to provide the accommodation.
- 5.

Whether Mr. Stone has a qualifying disability

Case law and Housing and Urban Development (HUD) have stated that a person who meets the definition of disability for the purposes of receiving SSDI or SSI, in most cases, also meets the definition of disability under the Fair Housing Act. Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999), Joint Statement of the Department of Housing and Urban Development and The department of Justice – reasonable Accommodations Under the Fair Housing Act, pg. 13 – footnote 13, May 17, 2004.

Mr. Stone is a recipient of SSDI therefore he qualifies as a person with a disability under fair housing law.

Whether Mr. Stone made a request for a reasonable accommodation

Mr. Stone stated that several years ago he asked the then manager of the Border Motel for a reasonable accommodation for a parking space close to his rental unit because he has mobility issues and possesses a State of Vermont accessible parking placard. He admits he was assigned an acceptable parking space at that time even though it did not meet ADA regulations. The Respondents did not dispute the fact that Mr. Stone made a reasonable accommodation request for a parking space close to his rental unit.

Whether Mr. Stone's request was reasonable and did not unduly burden the respondent.

Since the motel has a large parking area; designated three parking spaces as "accessible" parking spaces; assigned a parking space to Mr. Stone; and, the Respondents have not stated that providing Mr. Stone an accessible space creates an undue burden for

them, this investigation does not believe providing Mr. Stone a space closer to his rental unit creates an undue burden for the respondents.⁷

Whether the respondents failed to provide Mr. Stone with a reasonable accommodation

Originally the Border Motel provided Mr. Stone with a parking space near his rental unit. However, when Border Motel was ordered by the fire marshal to make changes to its parking area, the space Mr. Stone had been using was eliminated. He was assigned a new parking space further away from his room. Though this distance may seem to be de minimis to a person without a mobility disability this investigation could find no reason why Mr. Stone could not have been assigned one of at least three other parking spaces that were closer to his room as the law requires, rather than spaces that were further away from his room.

This investigation believes that Border Motel could legitimately request that Mr. Stone repair his car so it does not leak oil on to its parking lot, if it makes the same request of all other renters. Since the respondents were willing to assign one space in its parking lot to Mr. Stone, without concern of the oil leaking, there does not appear to be any reason why that space could not have been closer to his rental unit rather than farther away from it.

The HUD and DOJ Joint Statement on reasonable Accommodations states:

There may be instances where a provider believes that, while an accommodation requested by an individual is reasonable, there is an alternative accommodation that

⁷ Susan Patnoe did state that since Mr. Stone's car leaked oil she only wanted him to park in the space designated to him.

would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation.

This investigation believes that when the Border Motel moved Mr. Stone's assigned parking space further from his rental unit, whether one, two or three times, it failed to provide Mr. Stone without a legitimate reason with the reasonable accommodation he requested.

PRELIMINARY RECOMMENDATION:

This investigation report also recommends that the Human Rights Commission find that there are **reasonable grounds** to believe that the Susan Patnoe and Christine Barch discriminated against Mr. Stone in violation of 9 V.S.A. §4503(10) of Vermont's Fair Housing and Public Accommodations Act.

There are **no reasonable grounds** to believe that the Respondents violate 9 V.S.A. §4503 (5) of Vermont's Fair Housing and Public Accommodations Act.

Ellen T Maxon, Investigator

Date

Approved by:

Robert Appel, Executive Director

Date

